

1990 CASE DIGEST INDEX

VOLUME 26

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CONTENTS

PART I—STATE CRIMES

3. NATURE AND ELEMENTS OF SPECIFIC CRIMES	
§ 3.170 Harassment	556
§ 3.171 —Intimidation by telephone	556
§ 3.195 Vehicular homicide	556
§ 3.220 Murder	556
§ 3.240 —Malice, premeditation	556
§ 3.265 Intoxicated driving	556
§ 3.266 —Driving under the influence of drugs	556
§ 3.270 —Scientific tests	556
§ 3.275 Kidnaping	556
§ 3.355 Rape	556
§ 3.411 Wiretapping	556
6. DEFENSES	
§ 6.00 Alibi	556
§ 6.05 —Notice requirement	556

PART II—STATE CRIMINAL PROCEDURES, ANCILLARY PROCEEDINGS

9. INDICTMENT AND INFORMATION	
§ 9.00 Indictment and information	556
10. PRETRIAL MOTIONS	
§ 10.20 Motions by indigent defendants	557
12. GUILTY PLEAS	
§ 12.40 Equivocal guilty plea	557
§ 12.50 —Court's failure to advise defendant of consequences of plea	557
13. EVIDENCE	
§ 13.18 Statutory alteration to rules of evidence	557
§ 13.151 —DNA printing tests	557
§ 13.156 Evidence obtained under hypnosis	557
§ 13.170 Privileged communications	557
§ 13.180 Witness's assertion of privilege against self-incriminating—effect	557
§ 13.195 Expert witnesses	557
§ 13.276 Rape-shield laws	557
§ 13.315 Hearsay evidence	558
§ 13.321 —Videotaped testimony	558
WEIGHT AND SUFFICIENCY	
§ 13.380 Sufficiency of evidence	558
§ 13.425 —Sex crimes	558
ADMISSIBILITY AND WITNESSES	
§ 13.101 Courtroom experiment	557
§ 13.115 Identification evidence	557
14. TRIAL	
§ 14.80 Conduct of trial judge	558
§ 14.90 —Prejudicial comments	558

CRIMINAL LAW BULLETIN

§ 14.150	Conduct of prosecutor	558
§ 14.155	—Improper questioning of witnesses	558
§ 14.165	—Comments made during summation	558

15. JURY

SELECTION

§ 15.15	Systematic exclusion of blacks, etc.	558
---------	---	-----

VERDICT

§ 15.320	Requirement of unanimity	558
----------	--------------------------------	-----

17. SENTENCING AND PUNISHMENT

SENTENCING

§ 17.70	Illegal sentence	558
---------	------------------------	-----

PUNISHMENT

§ 17.101	Imposition of restitution	558
§ 17.105	Excessive sentences	558

18. APPEAL AND ERROR

§ 18.00	Right to Appeal	558
§ 18.25	Right to counsel	559
§ 18.35	—Withdrawal of counsel	559

21. ANCILLARY PROCEEDINGS

JUVENILE PROCEEDINGS

§ 21.40	Right to be treated as a juvenile	559
---------	---	-----

PART III—FEDERAL CRIMES

24. NATURE AND ELEMENTS OF SPECIFIC CRIMES

§ 24.35	Civil rights violations	559
§ 24.40	—Under color of law	559
§ 24.45	Conspiracy	559
§ 24.65	Drug violations	559
§ 24.90	False statements to federal department or agency	559

§ 24.135	Hobbs Act	559
§ 24.140	Homicide	559
§ 24.145	Income tax evasion	559
§ 24.190	Mail fraud	559

27. DEFENSES

§ 27.10	Collateral estoppel	560
---------	---------------------------	-----

PART IV—FEDERAL PROCEDURES

28. JURISDICTION AND VENUE

§ 28.25	Concurrent federal and state jurisdiction	560
---------	---	-----

29. PRELIMINARY PROCEEDINGS

§ 29.00	Grand jury proceedings	560
§ 29.05	—Subpoenas	560
§ 29.10	—Immunity	560
§ 29.20	Bail	560

31. PRETRIAL MOTIONS

§ 31.00	Sufficiency of indictment	560
---------	---------------------------------	-----

§ 31.10	—Severance	560
---------	------------------	-----

32. DISCOVERY

§ 32.00	In general	560
§ 32.15	—Identity of witnesses	560
§ 32.20	—Identity of informants	560

33. GUILTY PLEAS

§ 33.15	Accepting plea	560
§ 33.30	—Duty to advise defendant of consequences of plea	560

1990 CASE DIGEST INDEX

34. EVIDENCE

ADMISSIBILITY AND WITNESSES

- § 34.45 Proof of other crimes to show motive, intent, and so forth 561
- § 34.135 Privileged communications 561
- § 34.150 Expert witness 561
- § 34.160 Disclosure of identity of informants 561
- § 34.170 Cross-examination procedure . . . 561
- § 34.180 —Impeachment by prior conviction 561
- § 34.190 —Impeachment by prior inconsistent statement 561
- § 34.200 —Impeachment for prior illegal or immoral acts 561
- § 34.225 Admissions and confessions . . . 561
- § 34.235 —Declarations of co-conspirators 561

35. THE TRIAL

- § 35.50 Conduct of trial judge 561
- § 35.70 —Exclusion of evidence 561
- § 35.100 Discretion to prosecute 561
- § 35.105 —Improper questioning 561

36. THE JURY

SELECTION

- § 36.00 Requirement of an impartial jury . . . 562
- § 36.05 Qualification of individual jurors . . . 562
- § 36.10 Systematic exclusion of minority group members 562
- § 36.25 Conduct of voir dire 562

INSTRUCTIONS

- § 36.55 Accomplice testimony 562
- § 36.85 Duty to charge on defendant's theory of defense 562
- § 36.110 Intent and willfulness 562

DELIBERATION

- § 36.200 Supplemental instructions 562

37. POST-TRIAL MOTIONS

- § 37.00 Motion for new trial 562
- § 37.35 Federal habeas corpus 562
- § 37.40 —Jurisdiction 563
- § 37.50 —Exhaustion of state remedies . . . 563
- § 37.65 —Procedure 563

38. SENTENCING AND PUNISHMENT

SENTENCING

- § 38.10 Presentence report 563
- § 38.15 —Right to examine presentence report 563
- § 38.30 Standards for imposing sentence . . . 563
- § 38.35 Invalid conditions 563
- § 38.50 Resentencing 563

PUNISHMENT

- § 38.65 Increasing sentence upon retrial . . . 564

39. THE APPEAL

- § 39.35 Scope of appellate review 564

40. PROBATION AND PAROLE

- § 40.20 Standards for determining eligibility for parole 564
- § 40.25 Revocation of parole 564
- § 40.35 —Due process requirements 564

41. PRISONER PROCEEDINGS

- § 41.20 Limitations on reading matter . . . 564
- § 41.45 Other actions under Federal Civil Rights Act 564
- § 41.55 Medical treatment for prisoners . . . 564
- § 41.60 Prison regulations 564

42. ANCILLARY PROCEEDINGS

CONTEMPT

- § 42.10 Procedural requirements 564

DEPRIVATION OF CIVIL RIGHTS

- § 42.30 In general 564
- § 42.40 Statute of limitations in action for damages 565

JUVENILE DELINQUENTS AND YOUTHFUL OFFENDERS

- § 42.65 Juvenile delinquents 565
- § 42.70 —Due process 565

CRIMINAL LAW BULLETIN

PART V—CONSTITUTIONAL GUARANTEES

43. ADMISSIONS AND CONFESSIONS

GROUND FOR EXCLUSION:

GENERALLY

§ 43.00	Involuntariness and coercion . . .	565
§ 43.35	Absence of counsel	565
§ 43.40	Postindictment and postarrest statements	565

VIOLATION OF *MIRANDA* STANDARDS AS GROUND FOR EXCLUSION

§ 43.75	Necessity and sufficiency of warnings	565
---------	--	-----

44. CONFRONTATION OF WITNESSES

§ 44.00	In general	565
§ 44.05	—Interpretations by state courts	565

45. RIGHT TO COUNSEL

SCOPE AND EXTENT OF RIGHT GENERALLY

§ 45.10	Right to counsel of one's own choosing	565
§ 45.15	Absence of counsel during portion of proceedings	566
§ 45.25	Waiver	566

TYPE OR STAGE OF PROCEEDING

§ 45.45	Arraignment and preliminary hearing	566
§ 45.50	Psychiatric examination by prosecution	566
§ 45.60	Sentencing	566
§ 45.80	Habeas corpus and other postconviction collateral proceedings	566

ADEQUACY AND EFFECTIVENESS OF COUNSEL

§ 45.110	Ineffectiveness	566
§ 45.115	—Interpretations by state courts	566
§ 45.130	—Failure to introduce evidence or make objections	566

CONFLICT OF INTEREST

§ 45.145	In general	566
§ 45.150	Representation of codefendants	566

46. CRUEL AND UNUSUAL PUNISHMENT

§ 46.05	Death penalty	567
§ 46.10	—Statutory requirements	567

47. DOUBLE JEOPARDY

§ 47.10	When jeopardy attaches	567
§ 47.20	Mistrials	567
§ 47.25	—Reasons for grant	567
§ 47.45	Separate and distinct offenses	567
§ 47.50	—Same transaction	567

48. DUE PROCESS

§ 48.00	In general	568
§ 48.01	—Interpretations by state courts	568

49. EQUAL PROTECTION

§ 49.00	In general	568
---------	----------------------	-----

53. FREEDOM OF SPEECH AND EXPRESSION

§ 53.00	In general	568
§ 53.10	—Expression	568

55. RIGHT TO JURY TRIAL

§ 55.00	In general	568
---------	----------------------	-----

58. PROHIBITION AGAINST UNLAWFUL SEARCHES AND SEIZURES

SCOPE AND EXTENT OF RIGHT IN GENERAL

§ 58.00	What constitutes a search	568
§ 58.05	Constitutionally protected areas	568
§ 58.10	Property subject to seizure	568
§ 58.25	—Exigent circumstances	568
§ 58.30	—Automobile searches	569
§ 58.50	Search by private person	569

BASIS FOR MAKING SEARCH AND/OR SEIZURE

§ 58.75	Search warrant	569
§ 58.80	—Sufficiency of underlying affidavit	569
§ 58.85	—Validity of warrant on its face	569
§ 58.90	—Manner of execution	569
§ 58.100	—Necessity of obtaining a warrant	569
§ 58.105	Search incident to a valid arrest	569
§ 58.110	—Probable cause	569
§ 58.125	Permissible scope of incidental search	569
§ 58.130	Investigative stops	569

ELECTRONIC EAVESDROPPING

§ 58.135	In general	569
§ 58.155	Procedure for suppressing fruits of eavesdropping	570

1990 CASE DIGEST INDEX

CONSENT AND WAIVER

- § 58.170 In general 570
- § 58.185 —Third-party consent 570

SUPPRESSION OF EVIDENCE, IN GENERAL

- § 58.200 Standing 570
- § 58.205 Right to hearing 570

FRUITS OF THE POISONOUS TREE

- § 58.230 Evidence held admissible 570

59. PROHIBITION AGAINST SELF- INCRIMINATION

SCOPE AND EXTENT OF RIGHT, IN GENERAL

- § 59.12 Waiver of privilege 570

TESTIMONY AND RECORDS

- § 59.25 Testimony before grand jury ... 570
- § 59.36 Use of testimony obtained at
statement-suppression hearing .. 570

60. RIGHT TO SPEEDY TRIAL

- § 60.45 Right to reprosecute following
dismissal 570

61. RIGHT TO PUBLIC TRIAL

- § 61.00 In general 570

1990 CASE DIGEST INDEX

PART I—STATE CRIMES

3. NATURE AND ELEMENTS OF SPECIFIC CRIMES

§ 3.170 Harassment

§ 3.171 —Intimidation by telephone

Nebraska State v. Kipf, 450 N.W.2d 397 (1990), 26 CLB 471. Intimidation-by-phone statute is neither vague nor overbroad.

§ 3.195 Vehicular homicide

Colorado People v. Garner, 781 P.2d 87 (1989), 26 CLB 273. Fatal accident after drunk driving was vehicular homicide.

Nebraska State v. Ring, 447 N.W.2d 908 (1989), 26 CLB 275. Vehicular homicide conviction did not parallel using vehicle as deadly weapon.

Washington State v. MacMaster, P.2d 1037 (1989), 26 CLB 184. Causal link between alcohol and victim's death was necessary in vehicular homicide conviction.

§ 3.220 Murder

§ 3.240 —Malice, premeditation

Illinois People v. Chevalier, 544 N.E.2d 942 (1989), 26 CLB 185. Mere words are insufficient provocation to reduce murder conviction.

§ 3.265 Intoxicated driving

§ 3.266 —Driving under the influence of drugs

Hawaii State v. Engcabo, 784 P.2d 865 (1989), 26 CLB 373. Conviction of driving under the influence of drugs requires proof of a specific drug.

§ 3.270 —Scientific tests

New Jersey State v. Downie, 569 A.2d 242 (1990), 26 CLB 467. New Jersey rejects challenge to admissibility of breath-test results.

Washington State v. Long, 778 P.2d 1027 (1989), 26 CLB 184. Refusal to take breath test admissible as evidence.

§ 3.275 Kidnapping

Arizona State v. Viramontes, 788 P.2d 67 (1990), 26 CLB 467. Father of child may be convicted of kidnapping.

§ 3.355 Rape

Indiana Henson v. State, 535 N.E.2d 1189 (1989), 26 CLB 80. Defense as well as prosecution may present expert testimony on rape trauma syndrome.

§ 3.411 Wiretapping

Pennsylvania Commonwealth v. Henlen, 564 A.2d 905 (1989), 26 CLB 183. Officer had no justifiable expectation that his words would not be subject to interception.

6. DEFENSES

§ 6.00 Alibi

§ 6.005 —Notice requirement

New Jersey State v. Irving, 555 A.2d 575 (1989), 26 CLB 80. Prosecutor's use of notice of alibi was permitted for cross-examination at trial.

PART II—STATE CRIMINAL PROCEDURES, ANCILLARY PROCEEDINGS

9. INDICTMENT AND INFORMATION

§ 9.00 Indictment and information

Florida Tingley v. State, 549 So. 2d 649 (1989), 26 CLB 184. Variance between dates proved at trial and those in charging document was insubstantial.

1990 CASE DIGEST INDEX

10. PRETRIAL MOTIONS

§ 10.20 Motions by indigent defendants

Georgia *Brooks v. State*, 385 S.E.2d 81 (1989), 26 CLB 274. Indigent's request for state funds for expert assistance entitled to ex parte hearing.

12. GUILTY PLEAS

§ 12.40 Equivocal guilty plea

§ 12.50 —Court's failure to advise defendant of consequences of plea

Tennessee *State v. Newsome*, 778 S.W.2d 34 (1989), 26 CLB 273. Deviations from rules for taking guilty plea ruled harmless error.

13. EVIDENCE

§ 13.18 Statutory alteration to rules of evidence

Mississippi *Hill v. State*, 539 So. 2d 1338 (1989), 26 CLB 81. Statutory exception to admit hearsay evidence from child abuse victims was void.

ADMISSIBILITY AND WITNESSES

§ 13.101 Courtroom experiment

Rhode Island *State v. Wiley*, 567 A.2d 802 (1989), 26 CLB 371. Courtroom experiment eliciting victim's estimate of length of attack was improper.

§ 13.115 Identification evidence

Michigan *People v. Hall*, 447 N.W.2d 580 (1989), 26 CLB 274. Admission of sawed-off shotgun was proper.

§ 13.151 —DNA printing tests

Virginir *Spencer v. Commonwealth*, 384 S.E.2d 775 (1989), 26 CLB 182. Results of DNA print test could be used as evidence in murder case.

§ 13.156 Evidence obtained under hypnosis

Illinois *People v. Zayas*, 546 N.E.2d 513 (1989), 26 CLB 181. Witness's hypnotically enhanced testimony was not admissible.

§ 13.170 Privileged communications

New Jersey *In re Nackson*, 555 A.2d 1101 (1989), 26 CLB 79. Crime-or-fraud exception to attorney-client privilege did not apply.

§ 13.180 Witness's assertion of privilege against self-incrimination—effect

Pennsylvania *Commonwealth v. Todaro*, 569 A.2d 333 (1990). Unexplained departure of accomplice from witness stand did not prejudice defendant.

§ 13.195 Expert witnesses

California *People v. Stoll*, 265 Cal.Rptr. 111 (1989), 26 CLB 372. Psychiatric tests may be used to show child-sex-crime defendant's nondeviance.

Iowa *State v. Murphy*, 451 N.W.2d 1005 (1990), 26 CLB 466. Officer may testify on "horizontal gaze" test results without expert support.

Kentucky *Commonwealth v. Craig*, 783 S.W.2d 387 (1990), 26 CLB 465. Witness did not have to be a psychiatrist or a clinical psychologist to testify as an expert on "battered-wife syndrome."

New Jersey *State v. Odom*, 560 A.2d 1198 (1989), 26 CLB 81. Scope of expert opinion testimony was enlarged in prosecution for drug possession with intent to distribute.

Pennsylvania *Commonwealth v. Henry*, 569 A.2d 929 (1990), 26 CLB 467. Expert witness was qualified to testify about bite marks on the victim.

Utah *State v. Rimmasch*, 775 P.2d 388 (1989), 26 CLB 83. Expert testimony based on the "child-sexual-abuse profile" was inadmissible.

§ 13.276 Rape-shield laws

Illinois *People v. Sandoval*, 552 N.E.2d 726 (1990), 26 CLB 464. State rape-shield law barred all evidence of victim's prior sexual acts with others.

CRIMINAL LAW BULLETIN

§ 13.315 Hearsay evidence

Oregon State v. Moen, 786 P.2d 111 (1990), 26 CLB 280. Victim's statement to doctor that defendant might kill her was admissible.

Rhode Island State v. Braxter, 568 A.2d 311 (1990), 26 CLB 278. Admission of nontestifying informer's statements violated confrontation clause and the hearsay rule.

§ 13.321 —Videotaped testimony

Arkansas Curtis v. State, 783 S.W.2d 47 (1990), 26 CLB 471. Law admitting videotaped testimony does not violate separation of powers.

WEIGHT AND SUFFICIENCY

§ 13.380 Sufficiency of evidence

§ 13.425 —Sex crimes

South Dakota State v. Bachman, 446 N.W.2d 271 (1989), 26 CLB 184. Varying details did not damage child abuse testimony.

14. TRIAL

§ 14.80 Conduct of trial judge

Oregon State ex rel. O'Leary v. Lowe, 769 P.2d 188 (1989), 26 CLB 179. Defendant judge did not have authority to order pretrial interviews.

§ 14.90 —Prejudicial comments

Michigan People v. Manning, 450 N.W.2d 534 (1990), 26 CLB 279. Judge did not err in telling jury details of co-defendant's midtrial guilty plea.

§ 14.150 Conduct of prosecutor

§ 14.155 —Improper questioning of witnesses

Minnesota State v. Blasus, 445 N.W.2d 535 (1989), 26 CLB 183. Prosecutor's questioning of defense expert witness about his participation in specific, notorious murder cases was improper.

§ 14.165 —Comments made during summation

Pennsylvania Commonwealth v. Beasley, 568 A.2d 1235 (1990), 26 CLB 465. Com-

ment about appellate process in case involving capital defendant was not improper.

15. JURY

SELECTION

§ 15.15 Systematic exclusion of blacks, etc.

California Williams v. Los Angeles County Super. Ct., 781 P.2d 537 (1989), 26 CLB 180. Jury selection from the population of a judicial district rather than the entire county was proper.

New York People v. Hernandez, 553 N.Y.S.2d 85, 75 N.Y.2d 350, 552 N.E.2d 621 (1990), 26 CLB 470. Fear that Latino jurors would disagree with interpreter justified their dismissal.

VERDICT

§ 15.320 Requirement of unanimity

Oregon State v. Boots, 780 P.2d 725 (1989), 26 CLB 278. Unanimity was essential in jury's determination of aggravating factors in a capital murder case.

17. SENTENCING AND PUNISHMENT

SENTENCING

§ 17.70 Illegal sentence

Michigan People v. Jahner, 446 N.W.2d 151 (1989), 26 CLB 278. Parole viable for defendants convicted of conspiracy to commit first-degree murder.

PUNISHMENT

§ 17.101 Imposition of restitution

Colorado People v. Johnson, 780 P.2d 504 (1989), 26 CLB 277. Sentencing court is required to determine amount of restitution.

§ 17.105 Excessive sentences

Michigan People v. Moore, 439 N.W.2d 684 (1989), 26 CLB 82. Sentence that incarcerated defendant until death was struck down.

18. APPEAL AND ERROR

§ 18.00 Right to appeal

Iowa State v. Byrd, 448 N.W.2d 29 (1989), 26 CLB 276. Court had power to dismiss appeal but declined.

1990 CASE DIGEST INDEX

§ 18.25 Right to counsel

§ 18.35 —Withdrawal of counsel

Virginia Brown v. Warden of Va. State Penitentiary, 385 S.E.2d 587 (1989), 26 CLB 275. Counsel must file defendant's appeal.

21. ANCILLARY PROCEEDINGS

JUVENILE PROCEEDINGS

§ 21.40 Right to be treated as a juvenile

Nevada State v. Ninth Judicial Dist. Ct., 781 P.2d 776 (1989), 26 CLB 180. Juvenile could be tried as an adult for crimes committed before he turned 16.

PART III—FEDERAL CRIMES

24. NATURE AND ELEMENTS OF SPECIFIC CRIMES

§ 24.35 Civil rights violations

§ 24.40 —Under color of law

U.S. Supreme Court Graham v. Connor, 109 S. Ct. 1865 (1989), 26 CLB 70. Use of excessive force claim was properly analyzed under "objective reasonableness" standard.

Court of Appeals, Circuit Court, D.C. Cir. Graham v. Davis, 880 F.2d 1414 (1989), 26 CLB 74. Inadequate training claim against police department required allegation of deliberate indifference.

§ 24.45 Conspiracy

Court of Appeals, 2d Cir. United States v. Vanwort, 887 F.2d 375 (1989), 26 CLB 176. Use of employees of two airlines to ship cocaine was sufficient to establish single conspiracy.

Court of Appeals, 5th Cir. United States v. Fowler, 891 F.2d 1165 (1990), 26 CLB 270. Defendants' mail fraud convictions under intangible rights theory required vacation of their convictions for conspiracy.

§ 24.65 Drug violations

Court of Appeals, 3d Cir. United States v. One 107.9 Acre Parcel of Land Located in Warren Township, Bradford County, Pa., 898 F.2d 396 (1990), 26 CLB 463. Wife's active participation in illegal use of land contradicted her claim of nonconsent to forfeiture.

§ 24.90 False statements to federal department or agency

Court of Appeals, 6th Cir. United States v. Gibson, 881 F.2d 318 (1989), 26 CLB 78.

Defendant was liable for defrauding a government agency even though he was unaware of agency's jurisdiction.

§ 24.135 Hobbs Act

Court of Appeals, 4th Cir. United States v. McCormick, 896 F.2d 61 (1990), 26 CLB 367. Extortion conviction upheld in absence of evidence of quid pro quo.

§ 24.140 Homicide

Court of Appeals, 2d Cir. Blazic v. Henderson, 900 F.2d 534 (1990), 26 CLB 462. Failure to give justification charge in murder case was harmless error.

§ 24.145 Income tax evasion

Court of Appeals, 6th Cir. United States v. Fawaz, 881 F.2d 259 (1989), 26 CLB 78. Understatement of gas purchases by gasoline station operator was "material" in tax evasion case.

Court of Appeals, 6th Cir. United States v. Sassak, 881 F.2d 276 (1989), 26 CLB 78. Typist was liable for aiding the preparation of false tax returns.

§ 24.190 Mail fraud

Court of Appeals, 6th Cir. Callanan v. United States, 881 F.2d 229 (1989), 26 CLB 77. Mail fraud conviction based on intangible rights theory was vacated.

Court of Appeals, 7th Cir. United States v. Barber, 881 F.2d 345 (1989), 26 CLB 172. Defendant was liable under mail fraud statute for making false statement to district court.

CRIMINAL LAW BULLETIN

27. DEFENSES

§ 27.10 Collateral estoppel

Court of Appeals, 2d Cir. *In re American*

Tobacco Co., 880 F.2d 1520 (1989), 26 CLB 75. Collateral estoppel did not apply where subpoenas were drawn more narrowly than those quashed for overbreadth.

PART IV—FEDERAL PROCEDURES

28. JURISDICTION AND VENUE

§ 28.25 Concurrent federal and state jurisdiction

U.S. Supreme Court *Taffin v. Levitt*, 112 S. Ct. 792 (1990), 26 CLB 364. States have concurrent jurisdiction over civil RICO claims.

29. PRELIMINARY PROCEEDINGS

§ 29.00 Grand jury proceedings

U.S. Supreme Court *Butterworth v. Smith*, 110 S. Ct. 1376 (1990), 26 CLB 460. Prohibition on disclosure by grand jury witness of his own testimony violated first amendment.

Court of Appeals, D.C. Cir. *In re Sealed Motion*, 880 F.2d 1367 (1989), 26 CLB 74. Grand jury witness had right to transcript of testimony.

§ 29.05 —Subpoenas

U.S. Supreme Court *United States v. Zolin*, 109 S. Ct. 2619 (1989), 26 CLB 72. Restrictions placed by court on IRS's dissemination of subpoenaed information were upheld.

§ 29.10 —Immunity

Court of Appeals, 2d Cir. *United States v. Schwimmer*, 882 F.2d 22 (1989), 26 CLB 173. Testimony of defendant whose conviction is on appeal could be compelled before grand jury.

§ 29.20 Bail

Court of Appeals, 1st Cir. *United States v. Moss*, 887 F.2d 333 (1989), 26 CLB 175. Presumption of flight in Bail Reform Act was applicable even in absence of criminal record and likelihood that sentence imposed would be less than ten years.

31. PRETRIAL MOTIONS

§ 31.00 Sufficiency of indictment

§ 31.10 —Severance

Court of Appeals, D.C. Cir. *United States v. Manner*, 887 F.2d 317 (1989), 26 CLB 175. Severance is not required unless defendants have irreconcilably inconsistent defenses.

32. DISCOVERY

§ 32.00 In general

U.S. Supreme Court *John Doe Agency v. John Doe Corp.*, 110 S. Ct. 471 (1989), 26 CLB 267. Records not originally compiled for law-enforcement purposes were not required to be produced under the Freedom of Information Act.

§ 32.15 —Identity of witnesses

Court of Appeals, 1st Cir. *United States v. Paiva*, 892 F.2d 148 (1989), 26 CLB 271. Denial of defendant's motion for bill of particulars was proper.

§ 32.20 —Identity of informants

Court of Appeals, 4th Cir. *United States v. Roberts*, 881 F.2d 95 (1989), 26 CLB 76. Defendant was not entitled to confidential Drug Enforcement Agency files on informant.

33. GUILTY PLEAS

§ 33.15 Accepting plea

§ 33.30 —Duty to advise defendant of consequences of plea

Court of Appeals, 9th Cir. *United States v. Wills*, 881 F.2d 823 (1989), 26 CLB 173.

1990 CASE DIGEST INDEX

Judge was not required to advise defendant that sentence would be consecutive with unrelated state sentence he was serving.

34. EVIDENCE

ADMISSIBILITY AND WITNESSES

§ 34.45 Proof of other crimes to show motive, intent, and so forth

Court of Appeals, 3d Cir. Lesko v. Owens, 881 F.2d 44 (1989), 26 CLB 76. Introduction of evidence of second murder on same day in murder trial was proper.

Court of Appeals, 5th Cir. United States v. Williams, 900 F.2d 823 (1990), 26 CLB 463. Evidence that narcotics defendant had mailed other packages from fictitious addresses was admissible.

Court of Appeals, 10th Cir. United States v. Porter, 881 F.2d 878 (1989), 26 CLB 173. Evidence of attempted burglary of grocery store by defendant was admissible on issue of identity.

§ 34.135 Privileged communications

Court of Appeals, D.C. Cir. United States v. White, 887 F.2d 267 (1989), 26 CLB 174. Conversation between defendant and his attorney was not admissible merely because co-defendant "opened the door."

Court of Appeals, 2d Cir. United States v. Schwimmer, 892 F.2d 237 (1989), 26 CLB 269. Information defendant furnished to co-defendant's accountant was protected by attorney-client privilege.

§ 34.150 Expert witness

Court of Appeals, 5th Cir. United States v. Roberts, 887 F.2d 534 (1989), 26 CLB 177. Exclusion of psychological testimony was harmless error.

§ 34.160 Disclosure of identity of informants

Court of Appeals, 1st Cir. Irons v. FBI, 880 F.2d 1446 (1989), 26 CLB 74. Public testimony of "confidential source" did not amount to waiver of exemption under Freedom of Information Act.

§ 34.170 Cross-examination procedure

§ 34.180 —Impeachment by prior conviction

Court of Appeals, D.C. Cir. United States v. Miller, 895 F.2d 1431 (1990), 26 CLB 366. Admission of evidence that witness was aware of defendant's prior criminal record was harmless error.

§ 34.190 —Impeachment by prior inconsistent statement

Wisconsin State v. Schultz, 448 N.W.2d 424 (1989), 26 CLB 371. Accused may be impeached with testimony given at statement-suppression hearing.

§ 34.200 —Impeachment for prior illegal or immoral acts

Court of Appeals, 3d Cir. United States v. McNeill, 887 F.2d 448 (1989), 26 CLB 178. Limitation on cross-examination of witness on his prior misconduct was proper.

§ 34.225 Admissions and confessions

§ 34.235 —Declarations of co-conspirators

Court of Appeals, 2d Cir. United States v. Garcia, 900 F.2d 571 (1990), 26 CLB 462. Introduction of defendant's prior record of drug arrests was proper.

35. THE TRIAL

§ 35.50 Conduct of trial judge

§ 35.70 —Exclusion of evidence

Court of Appeals, 1st Cir. United States v. Collazo-Martinez, 880 F.2d 1496 (1989), 26 CLB 75. Exclusion of evidence that car had not been reported as stolen was harmless error.

§ 35.100 Discretion to prosecute

§ 35.105 —Improper questioning

Court of Appeals, 2d Cir. United States v. Scania, 900 F.2d 485 (1990), 26 CLB 461. Prosecutor's error in cross-examination of defendant was harmless.

Court of Appeals, 2d Cir. United States v. Musacchia, 900 F.2d 493 (1990), 26 CLB

CRIMINAL LAW BULLETIN

461. Improper bolstering of government witnesses did not require reversal.

36. THE JURY

SELECTION

§ 36.00 Requirement of an impartial jury

U.S. Supreme Court *Holland v. Illinois*, 110 S. Ct. 803 (1990), 26 CLB 363. Sixth Amendment did not prevent either side from exercising peremptory challenge to exclude potential jurors on racial grounds.

§ 36.05 Qualification of individual jurors

Court of Appeals, 5th Cir. *Weaver v. Puckett*, 896 F.2d 126 (1990), 26 CLB 367. Guilty verdict upheld despite evidence that juror was so hearing impaired that he could not hear everything said at trial.

§ 36.10 Systematic exclusion of minority group members

Court of Appeals, 4th Cir. *Evans v. Thompson*, 881 F.2d 117 (1989), 26 CLB 76. Death sentence imposed under amendment of sentencing procedures in capital case after prior death sentence had been vacated was proper.

§ 36.25 Conduct of voir dire

U.S. Supreme Court *Gomez v. United States*, 109 S. Ct. 2237 (1989), 26 CLB 72. Magistrate was ineligible to preside over jury selection in felony trial.

Court of Appeals, 2d Cir. *United States v. Gelb*, 881 F.2d 1155 (1989), 26 CLB 173. Failure to question potential jurors as to whether they would unduly credit testimony of law-enforcement officer was harmless error.

INSTRUCTIONS

§ 36.55 Accomplice testimony

Court of Appeals, 1st Cir. *United States v. Newton*, 891 F.2d 944 (1989), 26 CLB 270. Failure to give accomplice witness instruction did not require reversal.

§ 36.85 Duty to charge on defendant's theory of defense

U.S. Supreme Court *Boyde v. California*, 110 S. Ct. 1190 (1990), 26 CLB 363. Mandatory nature of "shall impose" language in jury instructions in death sentence case was proper.

Court of Appeals, 9th Cir. *United States v. Whitehead*, 896 F.2d 432 (1990), 26 CLB 369. Defendant was not entitled to have insanity charge given to the jury.

§ 36.110 Intent and willfulness

Court of Appeals, 2d Cir. *United States v. Diaz*, 891 F.2d 1057 (1989), 26 CLB 269. Instruction on inference arising from possession of recently stolen property was improper.

DELIBERATION

§ 36.200 Supplemental instructions

Court of Appeals, 2d Cir. *United States v. Ulloa*, 882 F.2d 41 (1989), 26 CLB 174. Judge's extended colloquy with jurors in effort to answer oral questions was not prejudicial.

37. POST-TRIAL MOTIONS

§ 37.00 Motion for new trial

Court of Appeals, 1st Cir. *United States v. Carbone*, 880 F.2d 1500 (1989), 26 CLB 75. Newly discovered evidence of alleged perjury of key government witness was insufficient to require new trial.

§ 37.35 Federal habeas corpus

Court of Appeals, 2d Cir. *United States v. Aiello*, 900 F.2d 528 (1990), 26 CLB 462. Dismissal of habeas corpus claim without hearing was not reversible error.

1990 CASE DIGEST INDEX

§ 37.40 —Jurisdiction

U.S. Supreme Court *Maleng v. Cook*, 109 S. Ct. 1923 (1989), 26 CLB 71. Habeas corpus challenge to sentence not currently being served was proper.

§ 37.50 —Exhaustion of state remedies

Court of Appeals, 7th Cir. *Hanrahan v. Greer*, 896 F.2d 241 (1990), 26 CLB 368. Prisoner's failure to raise issue of alleged extortion of state judge in state court constituted waiver.

§ 37.65 —Procedure

U.S. Supreme Court *Butler v. McKellar*, 110 S. Ct. 1212 (1990), 26 CLB 363. *Roberson* rule barring police-initiated interrogation following suspect's request for counsel would not be applied retroactively.

38. SENTENCING AND PUNISHMENT

SENTENCING

§ 38.10 Presentence report

Court of Appeals, 2d Cir. *United States v. Giaimo*, 880 F.2d 1561 (1989), 26 CLB 76. District court did not have jurisdiction to correct presentence report after sentencing.

Court of Appeals, 3d Cir. *United States v. Rosa*, 891 F.2d 1063 (1989), 26 CLB 270. Factual dispute regarding pretrial report required sentencing.

Court of Appeals, 9th Cir. *United States v. Roberson*, 896 F.2d 388 (1990), 26 CLB 368. Court was not required to make factual findings as to alleged errors in presentencing report.

§ 38.15 —Right to examine presentence report

Court of Appeals, 9th Cir. *United States v. Popoola*, 881 F.2d 811 (1989), 26 CLB 173. Sentence vacated for failure to give defendant and his attorney adequate opportunity to read and discuss presentence investigation report.

§ 38.30 Standards for imposing sentence

Court of Appeals, 1st Cir. *United States v. Anguilar-Pena*, 887 F.2d 347 (1989), 26

CLB 175. Sentence was excessive where departure from sentencing guidelines was not based on individualized circumstances of that particular case.

Court of Appeals, 1st Cir. *United States v. Paulino*, 887 F.2d 358 (1989), 26 CLB 175. Sentence was properly enhanced where firearm was used in commission of offense.

Court of Appeals, 2d Cir. *United States v. Rivalta*, 892 F.2d 223 (1989), 26 CLB 268. Finding of "nexus" between defendant's fraudulent scheme and victim's disappearance was insufficient to justify enhanced sentence.

Court of Appeals, 4th Cir. *United States v. McCrary*, 887 F.2d 485 (1989), 26 CLB 176. Trial court's refusal to grant downward adjustment under sentencing guidelines was proper.

Court of Appeals, 4th Cir. *United States v. Stokley*, 881 F.2d 114 (1989), 26 CLB 76. Defendant's prevention of victim from leaving room constituted "forcible restraint" for purposes of sentencing guidelines.

Court of Appeals, 5th Cir. *United States v. Reyes*, 881 F.2d 155 (1989), 26 CLB 77. Career narcotics offender was not entitled to a reduction of his sentence even though he accepted responsibility for his acts.

Court of Appeals, 5th Cir. *United States v. Tellez*, 882 F.2d 141 (1989), 26 CLB 174. Mere entry of guilty plea did not automatically entitle defendant to reduction of sentence under sentencing guidelines.

Court of Appeals, 7th Cir. *United States v. Lewis*, 896 F.2d 246 (1990), 26 CLB 368. The ruling that government must file motion before sentencing court can depart from sentencing guidelines is upheld.

§ 38.35 Invalid conditions

Court of Appeals, 5th Cir. *United States v. Stampf*, 900 F.2d 842 (1990), 26 CLB 462. Failure to warn defendant that restitution may be ordered as a condition of probation was harmless error.

§ 38.50 Resentencing

Court of Appeals, 2d Cir. *United States v. Rodriguez*, 892 F.2d 233 (1989), 26 CLB 268. Resentence subjecting defendant to

CRIMINAL LAW BULLETIN

harsher good-time provisions did not amount to double jeopardy.

Court of Appeals, 5th Cir. *In re United States*, 900 F.2d 800 (1990), 26 CLB 463. District court did not have jurisdiction to reduce sentence after having once denied motion for reduction.

PUNISHMENT

§ 38.65 Increasing sentence upon retrial

U.S. Supreme Court *Alabama v. Smith*, 109 S. Ct. 2201 (1989), 26 CLB 71. Greater sentence imposed after trial than that previously imposed after guilty plea was not improper.

39. THE APPEAL

§ 39.35 Scope of appellate review

Court of Appeals, 5th Cir. *United States v. Medina*, 887 F.2d 528 (1989), 26 CLB 177. Issue of whether suppressed statement could be considered in determining whether probable cause existed to arrest was not properly raised for first time on appeal.

40. PROBATION AND PAROLE

§ 40.20 Standards for determining eligibility for parole

Court of Appeals, 7th Cir. *Skowronek v. Brennan*, 896 F.2d 264 (1990), 26 CLB 369. Sentencing reform act provisions did not apply to parole of prisoners sentenced before effective date of act.

§ 40.25 Revocation of parole

§ 40.35 Due process requirements

Court of Appeals, 7th Cir. *United States v. Rasmussen*, 881 F.2d 395 (1989), 26 CLB 172. Thirteen-month delay between notice and hearing on probation violation was not denial of due process.

41. PRISONER PROCEEDINGS

§ 41.20 Limitations on reading matter

U.S. Supreme Court *Thornburgh v. Ab-*

bott, 109 S. Ct. 1874 (1989), 26 CLB 70. Prison regulations relating to receipt of subscription publications must be judged by relationship to reasonable penological interests.

Court of Appeals, 6th Cir. *Ward v. Wash-tenau County Sheriff's Dep't*, 881 F.2d 325 (1989), 26 CLB 78. Prison authority had right to restrict inmates' receipt of periodicals to those received directly from publisher.

§ 41.45 Other actions under Federal Civil Rights Act

Court of Appeals, 2d Cir. *Powell v. Gardner*, 891 F.2d 1039 (2d Cir. 1989), 26 CLB 269. Evidence created a jury question in civil rights action where officer's version conflicted with arrestee's version of events.

§ 41.55 Medical treatment for prisoner

U.S. Supreme Court *Neitzke v. Williams*, 109 S. Ct. 1827 (1989), 26 CLB 70. Civil rights suit brought *in forma pauperis* was reinstated.

§ 41.60 Prison regulations

U.S. Supreme Court *Kentucky Dep't of Corrections v. Thompson*, 109 S. Ct. 1904 (1989), 26 CLB 71. Inmates had no liberty interest in receiving visitors.

42. ANCILLARY PROCEEDINGS

CONTEMPT

§ 42.10 Procedural requirements

U.S. Supreme Court *Spallone v. United States*, 110 S. Ct. 625 (1990), 26 CLB 268. Contempt sanctions against city council members were improper.

DEPRIVATION OF CIVIL RIGHTS

§ 42.30 In general

Court of Appeals, 2d Cir. *Krause v. Bennett*, 887 F.2d 362 (1989), 26 CLB 176. Officer was immune from civil rights liability where determination to make arrest was objectively reasonable.

1990 CASE DIGEST INDEX

§ 42.40 Statute of limitations inaction for damages

Court of Appeals, 9th Cir. *Krug v. Imbordini*, 896 F.2d 395 (1990), 26 CLB 369. Limitations period for federal civil rights actions was the same as the appropriate state statute for personal injury cases.

JUVENILE DELINQUENTS AND YOUTHFUL OFFENDERS

§ 42.65 Juvenile delinquents

§ 42.70 —Due process

Connecticut *In re Ralph M.*, 559 A.2d 179 (1989), 26 CLB 80. Hearsay and other allegedly inadmissible evidence was relevant at transfer hearing.

PART V—CONSTITUTIONAL GUARANTEES

43. ADMISSIONS AND CONFESSIONS

GROUND FOR EXCLUSION; GENERALLY

§ 43.00 Involuntariness and coercion

Indiana *Light v. State*, 547 N.E.2d 1073 (1989), 26 CLB 373. Officer's slaps of murder suspect did not induce an involuntary confession.

§ 43.35 Absence of counsel

California *People v. Thompson*, 785 P.2d 857 (1990), 26 CLB 469. Suspect's initiation of discussion amounted to waiver of right to counsel.

Washington *State v. Stewart*, 780 P.2d 844 (1989), 26 CLB 181. Defendant's confession to burglary made while in police custody for an unrelated robbery was admissible at his trial for burglary.

§ 43.40 Postindictment and postarrest statements

U.S. Supreme Court *James v. Illinois*, 110 S. Ct. 648 (1990), 26 CLB 267. Impeachment exception to exclusionary rule would not be expanded.

VIOLATION OF *MIRANDA* STANDARDS AS GROUND FOR EXCLUSION

§ 43.75 Necessity and sufficiency of warnings

U.S. Supreme Court *Duckworth v. Eagan*, 109 S. Ct. 2875 (1989), 26 CLB 73. *Miranda* rights were held to have been given though not in precise form.

44. CONFRONTATION OF WITNESS

§ 44.00 In general

§ 44.05 —Interpretations by state courts

Colorado *People v. Thurman*, 787 P.2d 646 (1990), 26 CLB 470. Witness's general fears did not eliminate defendant's right under Confrontation Clause to her address and employment information.

Connecticut *State v. Bonello*, 554 A.2d 277 (1989), 26 CLB 179. Defendant has no absolute right to face-to-face confrontation with accuser.

Delaware *Tucker v. State*, 564 A.2d 1110 (1989), 26 CLB 272. Out-of-court statements admissible as evidence.

New York *People v. Cintron*, 75 N.Y.2d 249, 552 N.Y.S.2d 68 (1990), 26 CLB 279. Evidence of harm must be clear and convincing for child witness to testify via television.

Rhode Island *State v. Braxter*, 568 A.2d 311 (1990), 26 CLB 278. Discussed at § 13.315 *supra*.

45. RIGHT TO COUNSEL

SCOPE AND EXTENT OF RIGHT GENERALLY

§ 45.10 Right to counsel of one's own choosing

U.S. Supreme Court *Caplin & Drysdale v. United States*, 109 S. Ct. 2646 (1989), 26 CLB 72. Validity of forfeiture statute was upheld.

U.S. Supreme Court *United States v. Monsanto*, 109 S. Ct. 2657 (1989), 26 CLB

CRIMINAL LAW BULLETIN

72. Federal drug forfeiture statute freezing defendant's assets upheld.

Georgia *Amadeo v. State*, 384 S.E.2d 181 (1989), 26 CLB 277. Indigent's former counsel's familiarity superseded state's interest in utilizing local counsel.

§ 45.15 Absence of counsel during portion of proceedings

Court of Appeals, 2d Cir. *United States v. Osterbrock*, 891 F.2d 1216 (1989), 26 CLB 270. Absence of counsel when jury returned verdict was harmless.

§ 45.25 Waiver

U.S. Supreme Court *Michigan v. Harvey*, 100 S. Ct. 1176 (1990), 26 CLB 363. Statements obtained in violation of Sixth Amendment were properly used to impeach defendant's false or inconsistent testimony.

Court of Appeals, 10th Cir. *United States v. Allen*, 895 F.2d 1557 (1990), 26 CLB 366. Failure to conduct pretrial inquiry into defendant's knowing waiver of his right to counsel was improper.

Court of Appeals, 10th Cir. *United States v. Dawes*, 895 F.2d 1581 (1990), 26 CLB 367. Harmless error analysis did not apply where defendant waived the right to counsel without being advised of risks.

Illinois *People v. Hicks*, 584 N.E.2d 1042 (1989), 26 CLB 373. Waiver of previously invoked right to counsel permits interrogation on unrelated crimes.

Maine *State v. Morrison*, 567 A.2d 1350 (1990), 26 CLB 370. Validity of waiver of trial counsel does not turn on warnings by judge.

TYPE OR STAGE OF PROCEEDING

§ 45.45 Arraignment and preliminary hearing

Michigan *People v. Crusoe*, 449 N.W.2d 641 (1989), 26 CLB 371. Request for lawyer at arraignment is no bar to interrogation on different crime.

§ 45.50 Psychiatric examination by prosecution

U.S. Supreme Court *Powell v. Texas*, 109 S. Ct. 3146 (1989), 26 CLB 73. Psychiatric

examination of defendant to determine future dangerousness without notice to counsel was improper.

§ 45.60 Sentencing

Illinois *People v. Kidd*, 544 N.E.2d 704 (1989), 26 CLB 271. Using uncounseled confession of unrelated crime violated defendant's rights.

§ 45.80 Habeas corpus and other postconviction collateral proceedings

U.S. Supreme Court *Murray v. Giarratano*, 109 S. Ct. 2765 (1989), 26 CLB 73. Indigent death row inmates seeking postconviction relief were not entitled to appointed counsel.

ADEQUACY AND EFFECTIVENESS OF COUNSEL

§ 45.110 Ineffectiveness

§ 45.115 —Interpretations by state courts

Delaware *Shockley v. State*, 565 A.2d 1373 (1989), 26 CLB 273. Narrative examination of defendant ruled effective.

§ 45.130 —Failure to introduce evidence or make objections

Court of Appeals, 5th Cir. *Hill v. Black*, 887 F.2d 513 (1989), 26 CLB 177. Defense counsel's failure to object when prosecutor told jury that its decision on death penalty was not "last word" on subject did not require reversal.

CONFLICT OF INTEREST

§ 45.145 In general

Court of Appeals, 2d Cir. *United States v. Jones*, 900 F.2d 512 (1990), 26 CLB 461. Prosecutor's threat of disciplinary action against defense counsel did not deny defendant effective assistance of counsel.

§ 45.150 Representation of codefendants

Georgia *Tarwater v. State*, 383 S.E.2d 883 (1989), 26 CLB 271. Multiple representation by counsel was per se ineffective assistance.

1990 CASE DIGEST INDEX

46. CRUEL AND UNUSUAL PUNISHMENT

§ 46.05 Death penalty

U.S. Supreme Court *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989), 26 CLB 73. Execution of mentally retarded persons was not unconstitutional.

U.S. Supreme Court *Stanford v. Kentucky*, 109 S. Ct. 2969 (1989), 26 CLB 736. Capital punishment for 16- and 17-year-old defendants was upheld.

U.S. Supreme Court *Delo v. Stokes*, 110 S. Ct. 110 (1980), 26 CLB 459. District court's fourth grant of a stay of execution was abuse of discretion.

U.S. Supreme Court *Selva v. Collins*, 110 S. Ct. 974 (1990), 26 CLB 364. Challenges to sentencing in capital cases in U.S. Supreme Court were improper unless first brought in court of appeals.

U.S. Supreme Court *McKay v. North Carolina*, 110 S. Ct. 1227 (1990), 26 CLB 365. North Carolina sentencing scheme requiring unanimity on mitigating circumstances held unconstitutional.

U.S. Supreme Court *Saffle v. Parks*, 110 S. Ct. 1257 (1990), 26 CLB 365. Proposed rule permitting jurors to base sentence in capital case on sympathy for defendant would not be applied retroactively.

U.S. Supreme Court *Whitmore v. Arkansas*, 110 S. Ct. 1717 (1990), 26 CLB 459. Death row defendant did not have standing to challenge validity of death sentence of another inmate.

U.S. Supreme Court *Clemons v. Mississippi*, 110 S. Ct. 1441 (1990), 26 CLB 459. Death sentence upheld even though it was based on improperly defined aggravating circumstances.

§ 46.10 —Statutory requirements

U.S. Supreme Court *Blystone v. Pennsylvania*, 110 S. Ct. 1078 (1990), 26 CLB 364. Pennsylvania death penalty statute satisfied requirement that the jury be allowed to consider all relevant mitigating evidence.

Oregon State v. Wagner, 786 P.2d 93 (1990), *on remand of* 752 P.2d 1136 (1988), 26 CLB 370. Broad mitigation inquiry must

be added to proceedings under death penalty law.

47. DOUBLE JEOPARDY

§ 47.10 When jeopardy attaches

Court of Appeals, 4th Cir. *United States v. Blackwell*, 900 F.2d 742 (1990), 26 CLB 462. Prosecution on substantive charge was not barred after dismissal of related conspiracy charge.

§ 47.20 Mistrials

Court of Appeals, 5th Cir. *United States v. Bauman*, 887 F.2d 546 (1989), 26 CLB 178. Defendant who requested mistrial was eligible for retrial on same charges without violating double jeopardy.

§ 47.25 —Reasons for grant

Court of Appeals, 10th Cir. *United States v. Crotwell*, 896 F.2d 437 (1990), 26 CLB 368. Defendant's retrial following a mistrial was barred by double jeopardy.

§ 47.45 Separate and distinct offenses

U.S. Supreme Court *United States v. Halper*, 109 S. Ct. 1892 (1989), 26 CLB 71. Double jeopardy clause prohibited a punitive sanction in civil case after sentence in criminal case.

U.S. Supreme Court *Jones v. Thomas*, 109 S. Ct. 2522 (1989), 26 CLB 72. Sentence of defendant to longer sentence after vacation of shorter one was proper.

U.S. Supreme Court *Dowling v. United States*, 110 S. Ct. 668 (1990), 26 CLB 267. Double jeopardy clause was not violated by introduction of evidence relating to a crime for which defendant was previously acquitted.

§ 47.50 —Same transaction

Court of Appeals, 5th Cir. *United States v. Bryan*, 896 F.2d 68 (1990), 26 CLB 367. Indictment charging same conspiracy to defraud as in prior indictment was barred on double jeopardy grounds.

CRIMINAL LAW BULLETIN

48. DUE PROCESS

§ 48.00 In general

Court of Appeals, D.C. Cir. *United States v. Sobamono*, 892 F.2d 90 (1989), 26 CLB 270. Exclusion of defendants during replay of audiotaped evidence for jury did not violate due process.

Court of Appeals, 2d Cir. *Fullan v. Commissioner of Corrections*, 891 F.2d 1007 (1989), 26 CLB 269. State policy of providing free trial transcripts only to pro se appellants or assigned counsel violated due process.

§ 48.01 —Interpretations by state courts

Arizona State v. Vickers, 768 P.2d 1177 (1989), 26 CLB 178. Denial of further medical testing was not in violation of defendant's constitutional rights.

49. EQUAL PROTECTION

§ 49.00 In general

Minnesota State v. Merrill, 450 N.W.2d 318 (1990), 26 CLB 279. Statutes defining the crime of "murder of an unborn child" upheld.

53. FREEDOM OF SPEECH AND EXPRESSION

§ 53.00 In general

U.S. Supreme Court *FW/PBS, Inc. v. City of Dallas*, 110 S. Ct. 596 (1990), 26 CLB 267. Zoning ordinance adversely affecting adult entertainment industry violated First Amendment.

U.S. Supreme Court *Osborne v. Ohio*, 110 S. Ct. 1691 (1990), 26 CLB 461. Statute prohibiting possession of child pornography upheld.

Iowa State v. Fratzke, 446 N.W.2d 781 (1989), 26 CLB 274. Insulting letter to officer did not constitute harassment.

New York People v. Dietze, 550 N.Y.S.2d 595 (1989), 26 CLB 372. Statute forbidding abusive language used with intent to harass or annoy is unconstitutionally overbroad.

§ 53.10 —Expression

U.S. Supreme Court *Texas v. Johnson*, 109 S. Ct. 2533 (1989), 26 CLB 72. Flag burning was protected by First Amendment.

55. RIGHT TO JURY TRIAL

§ 55.00 In general

New Mexico State v. Sanchez, 786 P.2d 42 (1990), 26 CLB 469. Jury right is triggered if maximum statutory term on all charges exceeds six months.

58. PROHIBITION AGAINST UNLAWFUL SEARCHES AND SEIZURES

SCOPE AND EXTENT OF RIGHT IN GENERAL

§ 58.00 What constitutes a search

Court of Appeals, 1st Cir. *United States v. Lyons*, 898 F.2d 210 (1990), 26 CLB 463. Defendant did not have expectation of privacy against use of key to identify ownership of premises.

§ 58.05 Constitutionally protected areas

U.S. Supreme Court *United States v. Verdugo-Urquidez*, 110 S. Ct. 1056 (1990), 26 CLB 364. Fourth Amendment was not applicable to search by U.S. authorities in Mexico.

§ 58.10 Property subject to seizure

Court of Appeals, 5th Cir. *United States v. Flores*, 887 F.2d 543 (1989), 26 CLB 177. Judicial authorization was not necessary before the IRS could make seizure of property in a public place.

New Jersey State v. Mollica, 554 A.2d 1315 (1989), 26 CLB 82. New Jersey requires a warrant for seizure of billing records of hotel room telephone.

§ 58.25 —Exigent circumstances

Kansas State v. McKessor, 785 P.2d 1332 (1990), 26 CLB 465. Gun seized after warrantless entry was admissible.

1990 CASE DIGEST INDEX

§ 58.30 —Automobile searches

U.S. Supreme Court *Florida v. Wells*, 110 S. Ct. 1632 (1990), 26 CLB 460. Opening of locked suitcase during inventory search was improper.

Minnesota State v. Bigelow, 451 N.W.2d 899 (1990), rev'g 447 N.W.2d 899 (Ct. App. 1989), 26 CLB 466. Passenger's bag could be opened in automobile search.

§ 58.50 Search by private person

Court of Appeals, 1st Cir. *United States v. Mitro*, 880 F.2d 1480 (1989), 26 CLB 75. Evidence seized during Canadian wiretap was admissible.

BASIS FOR MAKING SEARCH AND/OR SEIZURE

§ 58.75 Search warrant

§ 58.80 —Sufficiency of underlying affidavit

Hawaii State v. Graham, 780 P.2d 1103 (1989), 26 CLB 277. Information from defendant's child was a valid basis for search.

North Dakota State v. Mische, 448 N.W.2d 415 (1989), 26 CLB 374. Drug dealer's crimes were not sufficiently connected to home to support search.

Ohio State v. George, 544 N.E.2d 640 (1989), 26 CLB 272. Affidavit provided sufficient cause for search.

Oregon State v. Coffey, 788 P.2d 424 (1990), 26 CLB 471. Polygraph evidence established the reliability of an informer for a search warrant affidavit.

§ 58.85 —Validity of warrant on its face

Mississippi Hamilton v. State, 565 So. 2d 685 (1990), 26 CLB 464. Designation of wrong house in warrant did not invalidate search.

Oregon State v. Devine, 768 P.2d 913 (1989), 26 CLB 179. A search warrant is valid exclusively for particular premises.

§ 58.90 —Manner of execution

Colorado People v. Gifford, 782 P.2d 795 (1989), 26 CLB 370. Police entry of unlocked door of home violated knock-and-announce requirement.

§ 58.100 —Necessity of obtaining a warrant

Rhode Island State v. Hoffman, 567 A.2d 1134 (1990), 26 CLB 369. Warrantless entry of home ravaged by blast came under fire-scene exception.

§ 58.105 Search incident to a valid arrest

Court of Appeals, D.C. Cir. *United States v. Tivolacci*, 895 F.2d 1423 (1990), 26 CLB 366. Search of defendant's luggage was a valid search incident to a lawful arrest.

§ 58.110 —Probable cause

Colorado People v. Fields, 785 P.2d 611 (1990), 26 CLB 468. Arrest based on false information in police computer was void.

§ 58.125 Permissible scope of incidental search

U.S. Supreme Court *Maryland v. Buie*, 110 S. Ct. 1093 (1990), 26 CLB 365. Fourth Amendment permitted limited "protective sweep" in conjunction with in-home arrest.

U.S. Supreme Court *Smith v. Ohio*, 110 S. Ct. 1288 (1990), 26 CLB 366. Warrantless search of suspect's bag was not justified as a search incident to a lawful arrest.

§ 58.130 Investigative stops

Hawaii State v. Aguinaldo, 782 P.2d 1225 (1989), 26 CLB 276. Officers at valid road-block may demand driver's license and proof of insurance.

Kansas State v. Damm, 787 P.2d 1185 (1990), 26 CLB 469. Records check of passengers exceeded proper scope of vehicle stop.

Maine State v. Pinkham, 565 A.2d 318 (1989), 26 CLB 181. Safety reasons justified car stop by police officer.

Virginia Crandol v. City of Newport News, 386 S.E.2d 113 (1989), 26 CLB 275. Road-block was constitutionally sound.

ELECTRONIC EAVESDROPPING

§ 58.135 In general

Court of Appeals, 6th Cir. *Boddie v. American Broadcasting Co.*, 881 F.2d 267 (1989), 26 CLB 78. Wiretap statute was unconstitutional as applied to news media.

CRIMINAL LAW BULLETIN

Pennsylvania Commonwealth v. Melilli, 555 A.2d 1254 (1989), 26 CLB 79. Good-faith exception to exclusionary rule failed to save fruits of defective pen register order.

§ 58.155 Procedure for suppressing fruits of eavesdropping

U.S. Supreme Court *United States v. Rios*, 110 S. Ct. 1845 (1990), 26 CLB 459. Government's delay in sealing tapes of recorded conversations did not require suppression.

CONSENT AND WAIVER

§ 58.170 In general

§ 58.185 —Third-party consent

Delaware *Ledda v. State*, 564 A.2d 1125 (1989), 26 CLB 185. Auto driver has authority to consent to search where owner is present but does not object.

SUPPRESSION OF EVIDENCE, IN GENERAL

§ 58.200 Standing

U.S. Supreme Court *Minnesota v. Olson*, 110 S. Ct. 1684 (1990), 26 CLB 460. Overnight guest had standing to challenge warrantless search.

Court of Appeals, 7th Cir. *Matta-Balletes v. Henma*, 896 F.2d 255 (1990), 26 CLB 368. Prosecution of defendant who was illegally arrested and tortured in Honduras was proper.

Nebraska State v. Harms, 449 N.W.2d 1 (1989), 26 CLB 374. Right of occupant to challenge initial stop of vehicle discussed.

§ 58.205 Right to hearing

Court of Appeals, 7th Cir. *National-Standard Co. v. Adamkus*, 881 F.2d 352 (1989), 26 CLB 172. Denial of company's right to discovery regarding EPA's administrative search warrant application upheld.

FRUITS OF THE POISONOUS TREE

§ 58.230 Evidence held admissible

U.S. Supreme Court *New York v. Harris*,

110 S. Ct. 1640 (1990), 26 CLB 460. A statement made by a suspect outside his home after a warrantless search of premises was proper.

59. PROHIBITION AGAINST SELF-INCRIMINATION

SCOPE AND EXTENT OF RIGHT, IN GENERAL

§ 59.12 Waiver of privilege

Court of Appeals, 5th Cir. *Granviel v. Lynaugh*, 881 F.2d 185 (1989), 26 CLB 77. Defendant waived his Fifth Amendment privilege by raising insanity defense.

TESTIMONY AND RECORDS

§ 59.25 Testimony before grand jury

Massachusetts Commonwealth v. Doe, 544 N.E.2d 860 (1989), 26 CLB 182. Act-of-production protection was extended to custodian of corporate records.

§ 59.36 Use of testimony obtained at statement-suppression hearing

Wisconsin State v. Schultz, 448 N.W.2d 424 (1989), 26 CLB 371. Discussed at § 34.190 *supra*.

60. RIGHT TO SPEEDY TRIAL

§ 60.45 Right to re prosecute following dismissal

Court of Appeals, 4th Cir. *United States v. Jones*, 887 F.2d 492 (1989), 26 CLB 176. Dismissal without prejudice of indictment for speedy trial violation was proper.

61. RIGHT TO PUBLIC TRIAL

§ 61.00 In general

Utah State v. Butterfield, 784 P.2d 153 (1989), 26 CLB 374. Failure of defendant, an attorney, to object to order closing trial constituted waiver of Sixth Amendment rights.

